

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

B. BRAUN MELSUNGEN AG)
And B. BRAUN MEDICAL,)
INC.,)
)
 Plaintiffs, C.A. No. 09-347-JJF
)
v.)
)
TERUMO MEDICAL)
CORPORATION, and TERUMO)
CORPORATION,)
)
 Defendants.)

Wednesday, July 8, 2009
3:02 p.m.
Courtroom 6B

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE JOSEPH J. FARNAN, JR.
United States District Court Judge

APPEARANCES:

YOUNG, CONAWAY, STARGATT & TAYLOR, LLP
BY: MELANIE SHARP, ESQ.

-and-

KIRKLAND & ELLIS, LLP
BY: EDWARD C. DONOVAN, ESQ.
BY: GREGORY F. CORBETT, ESQ.

Counsel for the Plaintiffs

1 APPEARANCES CONTINUED:

2
3 FISH & RICHARDSON, P.C.
4 BY: DOUGLAS E. McCANN, ESQ.
5 BY: MATHIAS W. SAMUEL, ESQ.

6 Counsel for the Defendants
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1 THE CLERK: All rise.

2 THE COURT: All right. Be seated,
3 please.

4 (Everyone said, Good afternoon,
5 Your Honor.

6 THE COURT: You want to announce
7 your appearances?

8 MS. SHARP: Good afternoon, Your
9 Honor.

10 THE COURT: Good morning.

11 MS. SHARP: Melanie Sharp from
12 Young Conaway on behalf of the B. Braun
13 plaintiffs in this case.

14 With me in the courtroom today are
15 my colleagues from Kirkland & Ellis, D.C., Ed
16 Donovan --

17 MR. DONOVAN: Good afternoon.

18 MS. SHARP: -- and Greg Corbett.

19 THE COURT: Good afternoon.

20 MR. CORBETT: Good afternoon.

21 MS. SHARP: I would also like to
22 introduce our client, the senior vice president
23 and senior counsel from B. Braun Medical, Inc.,
24 Cathy Codrea.

1 THE COURT: Good afternoon.

2 MS. CODREA: Good afternoon.

3 MR. McCANN: Good afternoon, Your
4 Honor.

5 THE COURT: Good afternoon.

6 MR. McCANN: Doug McCann of Fish &
7 Richardson on behalf of Terumo Medical
8 Corporation and Terumo Corporation.

9 With me, Your Honor, my colleague,
10 Matt Samuel from our Twin Cities office. I'll
11 be filing a motion for admission pro hac for
12 Mr. Samuel today, Your Honor.

13 THE COURT: All right. That will
14 be granted.

15 MR. McCANN: Thank you, Your
16 Honor, and then also with us is our client
17 representative, Gael Tisack, who is vice
18 president and corporate counsel for Terumo.

19 And then also Earl Blackburn, who
20 is a college student, Your Honor, and an intern
21 at Terumo.

22 THE COURT: All right. Welcome.

23 MR. McCANN: Thank you.

24 THE COURT: All right. I took a

1 look at what's submitted and wanted to ask you a
2 couple of questions. What's the, if any,
3 relationship between the parties?

4 MR. DONOVAN: Your Honor, Ed
5 Donovan on behalf of the Braun plaintiffs.
6 There's no relationship between Braun and
7 Terumo.

8 THE COURT: And with regard to the
9 marketplace, what are the circumstances between
10 Braun and Terumo?

11 MR. DONOVAN: Your Honor, in terms
12 of the marketplace for the accused device, Braun
13 sells a product in the passive IV safety
14 catheter market. It's a market of about a
15 hundred million a year in sales.

16 Braun has about 90 percent of
17 those sales. Terumo, as we understand it, is
18 just now entering this year into that market.

19 I don't know if they had any
20 substantial sales at all. So in terms of the
21 marketplace, we have a huge portion of that
22 marketplace. Terumo is now trying to enter that
23 marketplace for the first time in the United
24 States.

1 THE COURT: Have the parties ever
2 litigated before?

3 MR. DONOVAN: Your Honor, the
4 parties have litigated before outside the United
5 States. Outside of the United States, Terumo
6 and Braun or a Braun entity and a Terumo entity
7 have litigated about these safety IV catheters.

8 I believe in Japan. I think
9 there's ongoing litigation in Malaysia. And
10 there is, I believe, at least two lawsuits in
11 Europe.

12 Now, those may not be the same
13 products. They are IV catheters, but different
14 countries have different types of IV products
15 depending upon the market.

16 But there is a history of
17 litigation between as it relates to this
18 product, and it's all what could be
19 characterized as recent.

20 THE COURT: In other words,
21 there's no 20-year history here, 10-year history
22 of litigation between the parties. This is
23 within the last five years?

24 MR. DONOVAN: I -- the last five

1 years, I think, would be accurate, Your Honor.

2 THE COURT: And in Japan, is it
3 actually a filed case?

4 MR. DONOVAN: My understanding, in
5 Japan there was a filed case by Braun that
6 Terumo took their product off the market and has
7 since reentered the market with a different
8 product. So I don't understand whether there's
9 presently pending litigation in Japan.

10 THE COURT: You said there were
11 two other European countries?

12 MR. DONOVAN: Malaysia. One of
13 the Braun entities has sued Terumo and that's
14 ongoing in Malaysia. And I believe there is
15 ongoing litigation, it may have been resolved,
16 but I still believe there's ongoing litigation
17 in two countries in Europe.

18 I think Germany is one of them,
19 and I don't recall off the top of my head the
20 second one.

21 THE COURT: Now, in the cases or
22 where other litigations that have occurred
23 between the parties, have they compromised any
24 of them, or have -- or any other arrangements

1 before it was litigation?

2 I mean, has there ever been
3 agreements between the parties relative to the
4 business?

5 MR. DONOVAN: In Japan, there has.
6 There was an agreement between the parties to
7 settle that case. That agreement, at least my
8 understanding, I believe is the case, that
9 agreement involved them removing the product
10 from the market.

11 There have been settlement
12 negotiations between the parties. There's
13 probably ongoing settlement negotiations between
14 the parties.

15 But it's my understanding
16 everything else is still pending and has not
17 been resolved by compromise.

18 THE COURT: So would I be
19 presumptuous if I thought that maybe Braun is
20 open to licensing?

21 MR. DONOVAN: I do not believe
22 that Braun would be open to licensing in the
23 United States market for the IV catheters. They
24 would be open to settlement, but the most

1 important market for safety IV catheters,
2 disposable catheters on your arm is the U.S.
3 They have a very large marketplace.

4 And they're not -- they would be
5 open to settlement, but not in terms of
6 licensing their product to sell in the United
7 States. They'd like them out of the market.

8 If there's another way to resolve
9 the differences, they are open to it and
10 probably are discussing that.

11 THE COURT: I have some experience
12 with these catheters. Matter of fact, I think I
13 still have an arm back there in the closet.
14 Fake arm. I'm not sure.

15 But what I want to know is: This
16 is a market that Braun, by its intellectual
17 property, wants to manufacture and protect?

18 MR. DONOVAN: Yes, it does.

19 THE COURT: Okay.

20 MR. DONOVAN: The safety IV
21 catheter -- I think Your Honor had experience
22 with safety IV catheters before BB and DAJ.
23 These are passive IV catheters.

24 You pull it out and a clip

1 automatically goes on the end. They've been
2 protecting this market for a long time in the
3 passive safety IV catheters with their patents.
4 And they would like to continue to protect them.

5 They're open to settlement
6 discussions, but they want the U.S. market. And
7 they would like to have Terumo out of that U.S.
8 market.

9 THE COURT: Okay. Anything that
10 you'd add to what I've been told already?

11 MR. SAMUEL: Your Honor, Matt
12 Samuel for Terumo. Generally, I agree.

13 If I can just clarify a couple of
14 things for the Court.

15 The other place where litigation
16 was pending, but has been resolved is Australia.
17 So there's litigation in Australia and Japan
18 that's been resolved.

19 There's ongoing litigation in
20 Malaysia and in Belgium. So that clarifies a
21 little bit for the Court.

22 THE COURT: Okay.

23 MR. SAMUEL: Beyond that, I don't
24 have anything at this point unless the Court has

1 questions.

2 THE COURT: Well, I'm going to get
3 back to Braun. Let me ask you a question: What
4 is your client's most important consideration
5 here, noninfringement or attacking the patents?
6 Of validity, I should say. When I said
7 attacking, I didn't mean to use that word in
8 that sense, but --

9 MR. SAMUEL: I understand. But
10 based on what we've studied and seen to date, we
11 think there are several clear, non-infringing
12 issues for this patent. On the invalidity side,
13 as you may have sensed, there's quite a history
14 here.

15 There's a very sizeable family
16 that Braun has been prosecuting and done a lot
17 of work with the Patent Office. Also, a lot of
18 patents overseas.

19 We, frankly, have not yet
20 formulated final opinions on that. We are
21 studying that very diligently and looking at
22 that.

23 So it would be premature at this
24 point for me to tell the Court we think this

1 patent is invalid. We certainly think there's
2 some rocks that need to be looked under and
3 studied.

4 THE COURT: But you certainly
5 think you don't infringe --

6 MR. SAMUEL: Correct, Your Honor.

7 THE COURT: -- based on the claims
8 now?

9 MR. SAMUEL: Absolutely.

10 THE COURT: Okay. Anything else
11 you want to tell me?

12 MR. SAMUEL: Nothing, Your Honor.

13 THE COURT: Okay. Well, you have
14 the good fortune of -- I say that seriously --
15 of falling within this little experiment that
16 myself and Judge Stark are conducting for 10 or
17 15 cases. And the reason why we have the
18 clients here is because we're particularly
19 interested in doing these patent case trials.
20 And the word in -- the actual word in the
21 federal rules is inexpensively and efficiently.

22 And that's what we're interested
23 in trying to achieve. And I know the lawyers
24 are and they make those attempts.

1 And so as I was looking at this
2 case, and I had a few questions which I've
3 gotten answered, it seems to me that what we
4 need to do is focus on infringement issues and
5 validity issues, and put everything else on the
6 back burner and save you some money.

7 No sense in getting into all of
8 that if it's really -- I mean, we may have to
9 get into it, and we all understand that, but get
10 you focused on what appears in the first
11 instance, whether there is infringement or not,
12 and then whether or not if there is found to be
13 infringement, whether the patents can withstand
14 a validity challenge.

15 That having been said, any
16 scheduling order on issues that can be focused
17 on in those two areas ought to be able to get to
18 trial. Both sides have picked well resourced
19 law firms.

20 I'm always happy to mention that
21 those well resourced law firms are coming up
22 against a sole practitioner with one associate,
23 that being myself. But it seems to me -- by the
24 way, for the local lawyers, at least we're still

1 on King Street, which is where I started. Looks
2 like where I'm going to end.

3 We ought to be able to get you to
4 trial if you want to get to trial, and you've
5 budgeted your case anywhere from 12 to 18 months
6 in a case like this. Once the plaintiffs --
7 what's the plaintiffs' thought?

8 MR. DONOVAN: Your Honor, from the
9 plaintiffs' perspective, that all sounds very
10 reasonable. The earlier the better.

11 What Braun's bottom line is,
12 they'd like to have an injunction. I mean, this
13 is not that different from the case of a
14 pharmaceutical-type case where somebody has a
15 patent and they have a big or all of the market,
16 and someone is trying to come in. They're
17 selling into our accounts now at a lower price.
18 We'd like to get them out.

19 So from the Braun perspective, if
20 we can have a trial focused on the liability so
21 we can get to an injunction, that's the most
22 important thing from Braun's perspective. Not
23 the damages that could come from a follow-on
24 trial.

1 So we would be certainly ready,
2 willing and able to work with counsel and have
3 the earliest possible trial date.

4 MR. SAMUEL: Your Honor, Matt
5 Samuel again for Terumo. We fully agree that
6 bifurcation here makes sense, and bifurcating
7 both discovery and trial on damages and
8 willfulness is the right thing to do.

9 We propose 15 months to go to
10 trial. It's in the middle of what you
11 recommended. We think that's reasonable, Your
12 Honor.

13 I do a lot of work with Japanese
14 clients. There are certainly logistical
15 difficulties and things that take longer dealing
16 with them.

17 The other issue is there is a lot
18 to look at on the invalidity side. And we'd
19 like some time to do that.

20 Frankly, we'd like some time to do
21 that before we are proposing claim constructions
22 and Markman. You'll see in the competing dates
23 that's why we have proposed a Markman hearing
24 still relatively quickly, but in January as

1 opposed to, I think, October for B. Braun. But
2 generally we fully agree with you. We think 15
3 months is doable. And we will dig in and get it
4 done if the Court sets a schedule like that.

5 THE COURT: Okay. I said 12 to 18
6 months. I was referencing from the filing date,
7 which is May of '09.

8 I'm going to put you at a July
9 2010 trial date, which is a little bit towards
10 the 15 months, a little bit away from the 12
11 months. But I think it's a reasonable target
12 date.

13 Are the parties interested in
14 waiving a jury trial and having a bench trial?

15 MR. DONOVAN: Your Honor, Ed
16 Donovan for B. Braun. We would be willing to
17 waive a jury trial and have a bench trial if we
18 could get an earlier trial date. And if there's
19 a way we could get it earlier than July, that
20 would be terrific, too.

21 In terms of the prior art, the
22 parties have been in litigation for a long time.
23 This patent has been submitted. All the prior
24 art, to the extent we were aware of it at the

1 time, it was prosecuted. So we're pretty far
2 along.

3 The parties are pretty reasonable
4 in discovery. Neither party wants to take tons
5 and tons of discovery, if you look at the
6 proposal.

7 So just -- I don't mean to test
8 your patience, but if there was an opportunity
9 for a trial date earlier than July, we'd be
10 perfectly happy to do it in a bench trial
11 consistent with Your Honor's schedule to get to
12 an earlier trial date.

13 Thank you.

14 MR. SAMUEL: Your Honor, thank
15 you. I was surprised on that one and B. Braun.

16 The short answer is, Your Honor, I
17 have not discussed this with Japan as much as I
18 would like to.

19 THE COURT: You don't have to tell
20 me today, then.

21 MR. SAMUEL: Yeah. I would be
22 happy to get back to the Court. And I
23 appreciate that.

24 THE COURT: Let me say, just so

1 we're clear here, I'm not offended if you pick a
2 jury trial. As everybody in the room knows,
3 that's less work for me. A lot less.

4 So, but, again, this is part of
5 what we're studying to see how expeditiously,
6 obviously, you can do some things. If it's a
7 bench trial, that is less expensive and maybe
8 more efficient.

9 Or you can -- because you can roll
10 Markman into the trial, for instance. And so it
11 saves a little bit of money there.

12 But I'm not offended if you get
13 back to us. I just want to offer it and then
14 get a decision, so we can put that on our little
15 chart of issues we're approaching with the
16 attorneys and the parties. So let us know in
17 about two weeks.

18 MR. SAMUEL: Absolutely.

19 THE COURT: Because it won't
20 affect the early part of discovery.

21 MR. SAMUEL: Thank you, Your
22 Honor.

23 MS. SHARP: Your Honor, may I ask
24 a couple of questions?

1 THE COURT: Sure.

2 MS. SHARP: As Mr. Donovan
3 explained, the issue of primary importance to
4 the Braun plaintiffs is securing injunctive
5 relief. So we are interested, if the Court were
6 at all able to accommodate it, in exploring a
7 bench trial if Your Honor has earlier dates.

8 So if Your Honor has any
9 information, we'd be happy to take that into our
10 consideration.

11 THE COURT: We can accommodate
12 almost any date, because we can split trial
13 dates -- trial days. I'm sorry. And
14 particularly when it's a bench trial, you don't
15 have the concerns of a jury and coming back and
16 forth.

17 But I -- to go to a bench trial, I
18 have to have both parties' consent. So I am
19 just going to put that off. But, yeah, there is
20 time in the schedule to fit whatever we need to
21 fit in.

22 MS. SHARP: And the other issue
23 would be making sure, particularly if there is
24 separation of the issues, that the injunctive

1 relief is heard in conjunction with the
2 liability phase.

3 THE COURT: Well, we're not --
4 yeah, absolutely. What would happen is that
5 there would be the liability trial and followed
6 by a Justice Thomas injunction hearing where we
7 would apply the four equitable principles and
8 get an answer.

9 And defendants know Chief Justice
10 Roberts in his part of the opinion quickly
11 added -- and basically there is kind of a rule
12 for injunctions. So defendants know once
13 particularly the plaintiff is stalking an
14 injunction, they're probably -- unless you fall
15 under Justice Kennedy's patent rule exception,
16 you're kind of dead meat in the Federal Courts.
17 It looks like to me any way.

18 So we would do it right
19 afterwards. I mean, it's an injunction hearing.
20 It's not a lot going on. You just have to put
21 evidence on to the four factors.

22 MS. SHARP: And I hope I'm not
23 talking out of turn. As Your Honor knows, we're
24 coming up to speed on the case. And it's a

1 straight forward patent.

2 There aren't complex issues.

3 There should not be an elaborate or extensive
4 Markman process, and particularly in the context
5 of bifurcation of issues.

6 I think our client's interest
7 would be to accelerate that portion of the trial
8 as much as the Court can accommodate.

9 THE COURT: Yeah. Just let me
10 give you this caveat.

11 To really expedite or accelerate
12 requires both parties' consent. If not, then
13 you know, in fairness, although we're focused on
14 efficiency and inexpensiveness, you have to
15 accommodate the interest of justice also under
16 Rule 1 and Rule 16. So that sounds like that's
17 where we are in this case, at least on the
18 procedure we're going to follow.

19 We may or may not have both
20 parties' consent. But if you don't, you know
21 that you're basically facing a July 2010 date.

22 MS. SHARP: Understood. Thank you
23 for the clarifications.

24 THE COURT: But we could start the

1 trial tomorrow if it's a bench trial. It always
2 amazes me.

3 Did you ever think about that?
4 Mr. McCann is going to love this. I love going
5 to courthouses when you visit cities.

6 There's never anybody in them
7 after five o'clock, yet we have a crunch. I
8 don't know why that is.

9 But law firms, your lights are on.
10 It's that economic collision, I guess. I don't
11 know. But you'll get back to us and let us
12 know.

13 Now, since you don't have an
14 agreed upon order, I'm going to require you to
15 submit in camera, not part of the docket, a
16 letter which is not shared with the other side,
17 but which each side sets forth what you've spent
18 to get to the Rule 16 conference, and in actual
19 expenditure of dollars, and what your client has
20 budgeted for this case to a trial.

21 And in this case, we'll include
22 the injunction hearing since that will -- if
23 there's infringement found -- will be on the
24 heels of the trial. So we ought to know that

1 number.

2 And we're going to take a look at
3 that number at the end of the case, wherever it
4 resolves, and if you could get that to us again
5 in the next two weeks.

6 Now, you have a lot of issues to
7 iron out. You're going to be assigned, as part
8 of this study group, to Judge Stark for
9 discovery disputes, which he'll be contacting
10 you probably within the next 30 days to come in
11 and see him. He's going to, because they will
12 implicate his work with you through some of the
13 disputes you have about ranges of discovery.

14 And he'll have the information
15 that you gave me today along with some
16 additional information he'll request from you.
17 And he'll put you on a course that will get your
18 discovery finished so you have time to be ready
19 for the July 2010 trial date.

20 Now, since you're getting assigned
21 to a magistrate judge for your discovery, what
22 I'll call pretrial proceeding, you're going to
23 have to retain a mediator.

24 As I've explained, the other

1 cases, you can't have both utilized with the
2 resources of the Court. The less expensive for
3 parties is the retention of a mediator for
4 compromise and settlement discussions.

5 I'm going to require you to have
6 one of those available to you within 30 days of
7 today. And then Judge Stark is going to give
8 you the benchmark for reporting to him on
9 whether you've met.

10 It will probably be 45 to 60 day
11 intervals whether you've met and whether you've
12 made progress. We're trying to -- I'm sure as
13 the clients are well aware, it's good, if it's
14 in your interest, to compromise a case 60 days
15 before trial or 30 days before trial because
16 there are some savings.

17 But it's a lot more inexpensive to
18 compromise a case in the middle of fact
19 discovery. And what we think is occurring,
20 we're not directing enough effort here toward
21 that in the early part of discovery.

22 So, again, the parties have to do
23 it. We're not going to hammer you because our
24 job is to get you to a trial. We want to be

1 sure that you are aware and taking opportunities
2 to try and settle the case from the very
3 earliest stages of the case right up until the
4 commencement of the trial.

5 So you'll have that mediator.
6 That mediator will work with you to try and
7 settle or compromise.

8 And it will be on a schedule that
9 Judge Stark will provide you that you'll report
10 to him. Now, you may report we have a mediator,
11 but we couldn't get both parties' consent to
12 settle.

13 That's fine. I mean, to meet, to
14 discuss. That's fine.

15 But then we can check that box at
16 our 60-day interval. And we're happy that we
17 did all we could do at 90 days.

18 You may be willing to meet. That's
19 fine. But you may have no progress. That's the
20 reporting we want for our statistics.

21 Do you have any questions about
22 any of those matters for the plaintiff?

23 MR. SAMUEL: Just one, Your Honor.
24 I recall from looking at some of the prior

1 scheduling transcripts, is there a list of
2 mediators the Court recommends or prefers?

3 THE COURT: Well, we have a list
4 that we use for special masters, and that's
5 available. It's mostly -- we try to do them in
6 turn unless there's a conflict.

7 And I think the next person up, I
8 talked about it yesterday or today is Judge
9 Bechtel. Former Judge Bechtel. He's in the
10 District of Eastern Pennsylvania.

11 And we -- so there is a list.
12 There's special masters.

13 We're also using them for cases
14 where we appoint them to handle the discovery
15 disputes. But what I don't want is the same
16 person doing discovery disputes that's doing the
17 mediation.

18 MR. SAMUEL: Understood.

19 THE COURT: But there is a list.
20 It's in the Clerk's Office.

21 And we also are advising people
22 that our Chancery Court, which has a lot of
23 business experience, is trying to get into
24 that. I think they're willing to do this. They

1 have a pretty good fee, though, I think.

2 Do you know what that fee is?

3 MS. SHARP: Your Honor, I don't
4 know off the top of my head, but there is a
5 statutory fee involved.

6 THE COURT: I thought it was like
7 \$5,000 a day.

8 MS. SHARP: I was thinking 2,000,
9 but I could be incorrect.

10 THE COURT: 2,000. It's not like
11 \$100 an hour like we're getting here. It's a
12 pretty good number.

13 But in that Chancery Court is a
14 Vice Chancellor Parsons who is doing -- has done
15 some cases, patent cases from this Court. But
16 he also has a patent litigation background.

17 He was a patent attorney, and I
18 think he has like a science degree in something
19 like engineering. And he's also been doing some
20 mediation for the Federal Circuit.

21 So I just give you that that
22 name --

23 MR. SAMUEL: Thank you.

24 THE COURT: -- along with our list

1 or anybody you can agree on?

2 MR. SAMUEL: All right. Thank
3 you, Your Honor.

4 THE COURT: Is that helpful?

5 MR. SAMUEL: Yes.

6 THE COURT: We more focus on who
7 we put in, so we're hoping we're not, you know,
8 on a wheel kind of rotating them except for
9 conflicts on the special masters' assignments.

10 I think there's five or six on
11 that list. You know, when we're done this
12 study, we are going to go to a -- like we have
13 for the bankruptcy appeals, we are going to go
14 to a mediation, which is separate, because it
15 might be a different talent set, skill set.

16 But we haven't done that yet. In
17 this district, everybody has used Judge Thyng.
18 And that's not going to work anymore with the
19 volume of her being the only person, so...

20 Plaintiffs have any questions?

21 MR. DONOVAN: No, Your Honor.

22 THE COURT: Okay.

23 Let me just make sure I've gone
24 down -- on the question of the Markman hearing,

1 I'm going to hold off on that date until I hear
2 from defendants about a jury or bench trial.
3 And actually, you know what I'll do, I think I'm
4 going to allow that to be set by Judge Stark as
5 part of his work through the scheduling order.
6 And then he'll just check with me.

7 I'll pretty much do it whenever he
8 puts it in place, unless it's my birthday. So
9 that will wrap that up.

10 Okay. I think we've covered
11 everything. You've got a trial date. You've
12 got Magistrate Judge Stark.

13 He's going to work through your
14 disputes on a scheduling order. You're going to
15 tell us whether you want a bench or jury trial,
16 and whether there's room to move it up. And
17 we'll move it to a date convenient for
18 everybody.

19 Because with a bench trial, we
20 have a lot of flexibility. And you have got to
21 be working on getting a mediator, so you can
22 tell Judge Stark who that is when you meet with
23 him.

24 Any questions?

1 MR. DONOVAN: No, Your Honor.

2 Thank you.

3 MR. SAMUEL: No, Your Honor.

4 Thank you.

5 THE COURT: Okay. Thank you very
6 much.

7 MS. SHARP: Thank you, Your Honor.

8 THE CLERK: All rise.

9 (Court was adjourned at 3:31 p.m.)

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1 State of Delaware)
2)
3 New Castle County)
4

5 CERTIFICATE OF REPORTER
6

7 I, Heather M. Triozzi, Registered
8 Professional Reporter, Certified Shorthand Reporter,
9 and Notary Public, do hereby certify that the
10 foregoing record, Pages 1 to 31 inclusive, is a true
11 and accurate transcript of my stenographic notes
12 taken on July 8, 2009, in the above-captioned matter.
13

14 IN WITNESS WHEREOF, I have hereunto set my
15 hand and seal this 8th day of July, 2009, at
16 Wilmington.
17

18
19 _____
20 Heather M. Triozzi, RPR, CSR
21 Cert. No. 184-PS
22
23
24